

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PAULA DEL VALLE, on behalf of herself and others similarly situated,	:	CIVIL ACTION
	:	
Plaintiff,	:	FILED ELECTRONICALLY
v.	:	ON SEPTEMBER 3, 2020
	:	
EMPIRE HOME HEALTH CARE INC.,	:	CLASS/COLLECTIVE ACTION
Defendant.	:	
	:	

COMPLAINT – CLASS/COLLECTIVE ACTION

Paula Del Valle (“Plaintiff”) brings this lawsuit against Empire Home Health Care Inc. (“Defendant”), seeking all available relief under the Fair Labor Standards Act (“FLSA”), 29 U.S.C. §§ 201, *et seq.*, and the Pennsylvania Minimum Wage Act (“PMWA”), 43 P.S. §§ 333.101, *et seq.* Plaintiff’s FLSA claim is asserted as a collective action under 29 U.S.C. § 216(b), while her PMWA claim is asserted as a class action under Federal Rule of Civil Procedure 23. *See Knepper v. Rite Aid Corp.*, 675 F.3d 249 (3d Cir. 2012) (collective and class claims may proceed together in the same lawsuit).

JURISDICTION AND VENUE

1. Jurisdiction over the FLSA claim is proper under 29 U.S.C. § 216(b) and 28 U.S.C. § 1331.
2. Jurisdiction over the PMWA claim is proper under 28 U.S.C. § 1367.
3. Venue in this Court is proper under 28 U.S.C. § 1391.

PARTIES

4. Plaintiff resides in Philadelphia, PA.
5. Defendant is headquartered in Philadelphia, PA.
6. Plaintiff is an employee covered by the FLSA and PMWA.

7. Defendant is an employer covered by the FLSA and PMWA.

FACTS

8. Defendant owns and operates a business that provides home health services to clients in and around Philadelphia. See <https://www.empirehomehealthcare.org/> (last reviewed 9/3/20).

9. Defendant employs workers who are paid on an hourly basis to provide home health services to Defendant's clients. We will call these individuals "home health workers."

10. Plaintiff was employed by Defendant at a home health worker during the three-year period relevant to this lawsuit. Like other home health workers, Plaintiff often worked over 40 hours per week.

11. Defendant paid Plaintiff a straight-time hourly wage ranging from around \$10.00 to around \$11.00.

12. During weeks in which Plaintiff and other home health workers work over 40 hours, Defendant generally pays them the straight-time rate for *all* hours worked, including hours worked over 40. For example, on the week ending July 1, 2018, Defendant credited Plaintiff with working 58 hours and paid her a straight-time rate of \$11.00 for every hour worked. No overtime premium pay was provided.

CLASS/COLLECTIVE ACTION ALLEGATIONS

13. Plaintiff brings her FLSA claim as a collective action pursuant to 29 U.S.C. §216(b) and brings her PMWA claim as a class action pursuant to Federal Rule of Civil Procedure 23. She sues on behalf of all individuals employed by Defendant and paid an hourly wage during any week within the past three years.

14. Plaintiff's FLSA claim should proceed as a collective action because she and

other putative collective members, having worked pursuant to the common compensation policies described herein, are “similarly situated” as that term is defined in 29 U.S.C. § 216(b) and the associated decisional law.

15. Class action treatment of Plaintiff’s PMWA claim is appropriate because, as alleged below, all of Federal Rule of Civil Procedure 23’s class action requisites are satisfied.

16. The class, upon information and belief, includes over 30 individuals, all of whom are readily ascertainable based on Defendant’s business records and are so numerous that joinder of all class members is impracticable.

17. Plaintiff is a class member, her claims are typical of the claims of other class members, and he has no interests that are antagonistic to or in conflict with the interests of other class members.

18. Plaintiff and her lawyers will fairly and adequately represent the class members and their interests.

19. Questions of law and fact are common to all class members, because, *inter alia*, this action concerns Defendant’s common compensation policies, as described herein. The legality of these policies will be determined through the application of generally applicable legal principles to common facts.

20. Class certification is appropriate under Federal Rule of Civil Procedure 23(b)(3) because common questions of law and fact predominate over questions affecting only individual class members and because a class action is superior to other available methods for the fair and efficient adjudication of this litigation.

COUNT I – FLSA

21. The FLSA requires that employees receive overtime premium compensation “not

less than one and one-half times” their regular pay rate for hours worked over 40 per week. *See* 29 U.S.C. § 207(a)(1).

22. In paying Plaintiff and other collective members straight-time compensation for hours worked over 40, Defendant acted willfully and with reckless disregard of clearly applicable FLSA provisions and, as such, willfully violated the FLSA.

COUNT II – PMWA

23. The PMWA requires that employees receive overtime premium compensation “not less than one and one-half times” the employee’s regular pay rate for hours worked over 40 per week. *See* 43 P.S. § 333.104(c).

24. In paying Plaintiff and other collective members straight-time compensation for hours worked over 40, Defendant violated the PMWA.


PRAYER FOR RELIEF

Plaintiff, on behalf of herself and other members of the class/collective, seeks the following relief:

- A. Unpaid overtime wages and prejudgment interest;
- B. Liquidated damages to the fullest extent permitted under the FLSA;
- C. Litigation costs, expenses, and attorneys’ fees; and
- D. Such other and further relief as the Court deems just and proper.

Date: September 3, 2020

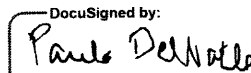
Respectfully,



Peter Winebrake
Winebrake & Santillo, LLC
715 Twining Road, Suite 211
Dresher, PA 19025
(215) 884-2491
pwinebrake@winebrakelaw.com

CONSENT TO BECOME PARTY PLAINTIFF

I hereby consent, pursuant to Section 16(b) of the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 216(b), to become a party plaintiff in the accompanying FLSA action. I understand that I will be bound by the judgment of the Court on all issues in this case.

DocuSigned by:

0F536C48133D4FC...

Signature – Paula Del Valle